IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 988 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA
and
Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

PRAJAPATI BACHIBEN WD/O. BHAGWANDAS PARSOTTAMDAS

Appearance:
Ms. Maya Desai for MR MD PANDYA for
the appellant.
MR BR PARIKH for Respondent No. 1-8
RULE SERVED for Respondent No. 9,11-12
MR SB VAKIL for Respondent No. 10

CORAM : MR.JUSTICE B.J.SHETHNA

and

MR.JUSTICE KUNDAN SINGH

Date of decision: 28/11/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE B.J.SHETHNA)

Gujarat State Road Transport Corporation has challenged in this appeal, the impugned judgment and award dated 30th November, 1983 passed by the learned Motor Accident Claims Tribunal (Main), Banaskantha, Palanpur in claim petition no. 108 of 1982, whereby the learned Tribunal partly allowed the claim of the claimants and awarded Rs. 93,000/- against the claim of Rs. 2 lacs.

2. The only submission made in thisappeal by the learned counsel Ms. Desai for learned counsel Mr. Pandya for the appellant Corporation was that the learned Tribunal ought not to have held the bus driver solely negligent for the accident which took place on 2nd March 1982 at about 6.30 p.m. in which Bhagwandas Parsottamdas aged 28 years died. Ms. Desai has taken us through the evidence of the claimant Parsottamdas Kalidas Prajapati at exh. 39. He was travelling in the jeep which met with the accident on 2nd March, 1982. She has also taken us through the evidence of thedriver of both the vehicles i.e. jeep as well as bus. Shambhubhai Prabhudas Prajapati exh. 55 is the driver of the bus. Varsingbhai is the driver of the jeep.

3. As per the evidence of Shambhubhai Prabhudas, driver of the bus at exh. 55, he had seen the jeep coming from the opposite direction at a distance of one km. He claimed that he stopped his bus on the road, but the jeep was coming from the opposite direction with full lights on and dashed with his bus and because of that Bhagwandas who was travlling in the jeep was thrown out of the jeep and died. He has denied the suggestion put to him in his cross-examination that he was driving the ST bus at an excessive speed and the jeep driver was driving at a slow speed.

4. Varsangji Panchaji exh. 56 driver of the jeep stated in his evidence that at a distance of half a km., he had seen the ST bus coming from the opposite direction. He was driving his jeep at a slow speed. It was a single road. Therefore, he was coming with full lights on. He took his jeep half on the kaccha road.

Inspite of that, the driver of the ST bus dashed with his jeep, because of that extensive damage was caused to his jeep. He lost his balance over the jeep and the jeep was thrown out and extensive damage was caused on the left hand side of his jeep. Surprisingly, there is no cross-examination whatsoever made by the ST Corporation on the point of negligence of the jeep driver. Even no suggestion was even put to the driver of the jeep that he was driving the jeep rashly or negligently and because of that the accident took place.

5. Thus, there is an oral version of both the drivers of the jeep and the bus against each other. However, the version of the jeep driver has remained unchallenged in his cross-examination.

6. Fortunately, the eye witness Parsottamdas Prajapati who was present at the time of the accident is the father of the deceased Bhagwandas who was the driver. He has clearly stated in his evidence that because of rash and negligent driving of the driver of the ST bus, the accident took place wherein his son died. In his cross-examination, it has come out that the jeep in which he was travelling was being driven on the extreme corner of the road at a very slow speed, whereas the ST bus was coming at an excessive speed.

7. The aforesaid oral evidence of the witnesses was duly considered by the learned Tribunal alongwith the documentary evidence like panchnama at exh. 43. From the panchnama, it is revealed that the width of the ST bus was 7 ft 10 inches. 5 ft. heaps of gravels were lying on the kachha road. The bus was away half a ft. from the heaps. Thus, it was covering almost 10 ft. 10" road leaving hardly 6 ft. including 5 ft. kachha road for the jeep to pass. Considering this evidence, the learned Tribunal has come to th conclusion that if the bus driver had seen the jeep car at a distance of one km., then it was his duty to slow down his bus. Instead of that, he continued to drive at an excessive speed and met with the accident. The fact that at the time of the accident, the bus driver did not bother to slow down his bus a little on the kaccha road shows that he was totally rash and negligent and because of his rash and negligent driving, the accident took place.

8. In view of the above, we are not prepared to accept the submission made by Ms. Desai for the appellant that there was a composite negligence on the part of the jeep driver.

9. In view of the above discussion, we do not find any substance or merit in this appeal. Accordingly, it fails and is hereby dismissed with costs.

(B.J.Shethna,J)

(Kundan Singh,J)

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